
SENATE BILL 6617

State of Washington

60th Legislature

2008 Regular Session

By Senators Murray, Kauffman, Schoesler, McAuliffe, Marr, Kohl-Welles, and Kline

Read first time 01/21/08. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to intermediate care facilities for the mentally
2 retarded; and amending RCW 70.129.005, 70.129.007, 70.129.010,
3 70.129.040, 70.129.090, 70.129.105, 70.129.110, 70.129.150, 70.129.160,
4 and 70.129.170.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 70.129.005 and 1994 c 214 s 1 are each amended to read
7 as follows:

8 The legislature recognizes that long-term and intermediate care
9 facilities are a critical part of the state's long-term care services
10 system. It is the intent of the legislature that individuals who
11 reside in long-term and intermediate care facilities receive
12 appropriate services, be treated with courtesy, and continue to enjoy
13 their basic civil and legal rights.

14 It is also the intent of the legislature that long-term care
15 facility and intermediate care facility for the mentally retarded
16 residents have the opportunity to exercise reasonable control over life
17 decisions. The legislature finds that choice, participation, privacy,
18 and the opportunity to engage in religious, political, civic,

1 recreational, and other social activities foster a sense of self-worth
2 and enhance the quality of life for (~~long-term care~~) residents.

3 The legislature finds that the public interest would be best served
4 by providing the same basic resident rights in all long-term and
5 intermediate care settings. Residents in nursing facilities are
6 guaranteed certain rights by federal law and regulation, 42 U.S.C.
7 1396r and 42 C.F.R. part 483. It is the intent of the legislature to
8 extend those basic rights to residents in veterans' homes, boarding
9 homes, (~~and~~) adult family homes, and intermediate care facility for
10 the mentally retarded.

11 The legislature intends that a facility should care for its
12 residents in a manner and in an environment that promotes maintenance
13 or enhancement of each resident's quality of life. A resident should
14 have a safe, clean, comfortable, and homelike environment, allowing the
15 resident to use his or her personal belongings to the extent possible.

16 **Sec. 2.** RCW 70.129.007 and 1994 c 214 s 20 are each amended to
17 read as follows:

18 The rights set forth in this chapter are the minimal rights
19 guaranteed to all residents of long-term and intermediate care
20 facilities, and are not intended to diminish rights set forth in other
21 state or federal laws that may contain additional rights.

22 **Sec. 3.** RCW 70.129.010 and 1997 c 392 s 203 are each amended to
23 read as follows:

24 Unless the context clearly requires otherwise, the definitions in
25 this section apply throughout this chapter.

26 (1) "Department" means the department of state government
27 responsible for licensing the provider in question.

28 (2) "Facility" means a long-term care facility or an intermediate
29 care facility for the mentally retarded.

30 (3) "Long-term care facility" means a facility that is licensed or
31 required to be licensed under chapter 18.20, 72.36, or 70.128 RCW.

32 (4) "Intermediate care facility for the mentally retarded" means an
33 intermediate care facility certified by the department of social and
34 health services and/or by the federal department of health and human
35 services to provide residential care under 42 U.S.C. Sec. 1396d(d).

1 (5) "Resident" means the individual receiving services in a long-
2 term care facility or an intermediate care facility for the mentally
3 retarded, that resident's attorney-in-fact, guardian, or other legal
4 representative acting within the scope of their authority.

5 ~~((+5))~~ (6) "Physical restraint" means a manual method, obstacle,
6 or physical or mechanical device, material, or equipment attached or
7 adjacent to the resident's body that restricts freedom of movement or
8 access to his or her body, is used for discipline or convenience, and
9 not required to treat the resident's medical symptoms.

10 ~~((+6))~~ (7) "Chemical restraint" means a psychopharmacologic drug
11 that is used for discipline or convenience and not required to treat
12 the resident's medical symptoms.

13 ~~((+7))~~ (8) "Representative" means a person appointed under RCW
14 7.70.065.

15 ~~((+8))~~ (9) "Reasonable accommodation" by a facility to the needs
16 of a prospective or current resident has the meaning given to this term
17 under the federal Americans with disabilities act of 1990, 42 U.S.C.
18 Sec. 12101 et seq. and other applicable federal or state
19 antidiscrimination laws and regulations.

20 **Sec. 4.** RCW 70.129.040 and 1995 1st sp.s. c 18 s 66 are each
21 amended to read as follows:

22 (1) The resident has the right to manage his or her financial
23 affairs, and the facility may not require residents to deposit their
24 personal funds with the facility.

25 (2) Upon written authorization of a resident, if the facility
26 agrees to manage the resident's personal funds, the facility must hold,
27 safeguard, manage, and account for the personal funds of the resident
28 deposited with the facility as specified in this section.

29 (a) The facility must deposit a resident's personal funds in excess
30 of one hundred dollars in an interest-bearing account or accounts that
31 is separate from any of the facility's operating accounts, and that
32 credits all interest earned on residents' funds to that account. In
33 pooled accounts, there must be a separate accounting for each
34 resident's share.

35 (b) The facility must maintain a resident's personal funds that do
36 not exceed one hundred dollars in a noninterest-bearing account,
37 interest-bearing account, or petty cash fund.

1 (3) The facility must establish and maintain a system that assures
2 a full and complete and separate accounting of each resident's personal
3 funds entrusted to the facility on the resident's behalf.

4 (a) The system must preclude any commingling of resident funds with
5 facility funds or with the funds of any person other than another
6 resident.

7 (b) The individual financial record must be available on request to
8 the resident or his or her legal representative.

9 (4) Upon the death of a resident with a personal fund deposited
10 with the facility the facility must convey within forty-five days the
11 resident's funds, and a final accounting of those funds, to the
12 individual or probate jurisdiction administering the resident's estate;
13 but in the case of a resident who received (~~long-term~~) care services
14 paid for by the state, the funds and accounting shall be sent to the
15 state of Washington, department of social and health services, office
16 of financial recovery. The department shall establish a release
17 procedure for use for burial expenses.

18 **Sec. 5.** RCW 70.129.090 and 1994 c 214 s 10 are each amended to
19 read as follows:

20 (1) The resident has the right and the facility must not interfere
21 with access to any resident by the following:

22 (a) Any representative of the state;

23 (b) The resident's individual physician;

24 (c) The state long-term care ombudsman as established under chapter
25 43.190 RCW;

26 (d) The agency responsible for the protection and advocacy system
27 for developmentally disabled individuals as established under part C of
28 the developmental disabilities assistance and bill of rights act;

29 (e) The agency responsible for the protection and advocacy system
30 for mentally ill individuals as established under the protection and
31 advocacy for mentally ill individuals act;

32 (f) Subject to reasonable restrictions to protect the rights of
33 others and to the resident's right to deny or withdraw consent at any
34 time, immediate family or other relatives of the resident and others
35 who are visiting with the consent of the resident;

36 (g) The agency responsible for the protection and advocacy system
37 for individuals with disabilities as established under section 509 of

1 the rehabilitation act of 1973, as amended, who are not served under
2 the mandates of existing protection and advocacy systems created under
3 federal law.

4 (2) The facility must provide reasonable access to a resident by
5 his or her representative or an entity or individual that provides
6 health, social, legal, or other services to the resident, subject to
7 the resident's right to deny or withdraw consent at any time.

8 (3) The facility must allow representatives of the state ombudsman
9 to examine a resident's clinical records with the permission of the
10 resident or the resident's legal representative, and consistent with
11 state and federal law.

12 (4) The facility shall notify the resident's representative, if
13 any, of access, visitation, or examination of clinical records made
14 under this section.

15 **Sec. 6.** RCW 70.129.105 and 1997 c 392 s 211 are each amended to
16 read as follows:

17 No long-term care facility (~~(or)~~) nursing facility licensed under
18 chapter 18.51 RCW, or an intermediate care facility for the mentally
19 retarded shall require or request residents to sign waivers of
20 potential liability for losses of personal property or injury, or to
21 sign waivers of residents' rights set forth in this chapter or in the
22 applicable licensing or certification laws.

23 **Sec. 7.** RCW 70.129.110 and 1997 c 392 s 205 are each amended to
24 read as follows:

25 (1) The facility must permit each resident to remain in the
26 facility, and not transfer or discharge the resident from the facility
27 unless:

28 (a) The transfer or discharge is necessary for the resident's
29 welfare and the resident's needs cannot be met in the facility;

30 (b) The safety of individuals in the facility is endangered;

31 (c) The health of individuals in the facility would otherwise be
32 endangered;

33 (d) The resident has failed to make the required payment for his or
34 her stay; or

35 (e) The facility ceases to operate.

1 (2) All ((~~long-term care~~)) facilities shall fully disclose to
2 potential residents or their legal representative the service
3 capabilities of the facility prior to admission to the facility. If
4 the care needs of the applicant who is medicaid eligible are in excess
5 of the facility's service capabilities, the department shall identify
6 other care settings or residential care options consistent with federal
7 law.

8 (3) Before a ((~~long-term care~~)) facility transfers or discharges a
9 resident, the facility must:

10 (a) First attempt through reasonable accommodations to avoid the
11 transfer or discharge, unless agreed to by the resident;

12 (b) Notify the resident and representative and make a reasonable
13 effort to notify, if known, an interested family member of the transfer
14 or discharge and the reasons for the move in writing and in a language
15 and manner they understand;

16 (c) Record the reasons in the resident's record; and

17 (d) Include in the notice the items described in subsection (5) of
18 this section.

19 (4)(a) Except when specified in this subsection, the notice of
20 transfer or discharge required under subsection (3) of this section
21 must be made by the facility at least thirty days before the resident
22 is transferred or discharged.

23 (b) Notice may be made as soon as practicable before transfer or
24 discharge when:

25 (i) The safety of individuals in the facility would be endangered;

26 (ii) The health of individuals in the facility would be endangered;

27 (iii) An immediate transfer or discharge is required by the
28 resident's urgent medical needs; or

29 (iv) A resident has not resided in the facility for thirty days.

30 (5) The written notice specified in subsection (3) of this section
31 must include the following:

32 (a) The reason for transfer or discharge;

33 (b) The effective date of transfer or discharge;

34 (c) The location to which the resident is transferred or
35 discharged;

36 (d) The name, address, and telephone number of the state long-term
37 care ombudsman;

1 (e) For residents with developmental disabilities, the mailing
2 address and telephone number of the agency responsible for the
3 protection and advocacy of developmentally disabled individuals
4 established under part C of the developmental disabilities assistance
5 and bill of rights act; ~~((and))~~

6 (f) For residents who are mentally ill, the mailing address and
7 telephone number of the agency responsible for the protection and
8 advocacy of mentally ill individuals established under the protection
9 and advocacy for mentally ill individuals act; and

10 (g) For residents of an intermediate care facility for the mentally
11 retarded, the mailing addresses and telephone numbers of the resident's
12 representative, if any, and the human rights committee of that facility
13 established under 42 C.F.R. 483.440.

14 (6) A facility must provide sufficient preparation and orientation
15 to residents to ensure safe and orderly transfer or discharge from the
16 facility.

17 (7) A resident discharged in violation of this section has the
18 right to be readmitted immediately upon the first availability of a
19 gender-appropriate bed in the facility.

20 **Sec. 8.** RCW 70.129.150 and 1997 c 392 s 206 are each amended to
21 read as follows:

22 (1) This section applies to long-term care facilities, intermediate
23 care facilities for the mentally retarded, and nursing facilities
24 licensed under chapter 18.51 RCW.

25 (2) Prior to admission, all ~~((long-term-care))~~ facilities ~~((or~~
26 ~~nursing facilities licensed under chapter 18.51 RCW))~~ that require
27 payment of an admissions fee, deposit, or a minimum stay fee, by or on
28 behalf of a person seeking admission to the ~~((long-term-care facility~~
29 ~~or nursing))~~ facility, shall provide the resident, or his or her
30 representative, full disclosure in writing in a language the resident
31 or his or her representative understands, a statement of the amount of
32 any admissions fees, deposits, prepaid charges, or minimum stay fees.
33 The facility shall also disclose to the person, or his or her
34 representative, the facility's advance notice or transfer requirements,
35 prior to admission. In addition, the ~~((long-term-care facility or~~
36 ~~nursing))~~ facility shall also fully disclose in writing prior to
37 admission what portion of the deposits, admissions fees, prepaid

1 charges, or minimum stay fees will be refunded to the resident or his
2 or her representative if the resident leaves the (~~long-term care~~
3 ~~facility or nursing~~) facility. Receipt of the disclosures required
4 under this subsection must be acknowledged in writing. If the facility
5 does not provide these disclosures, the deposits, admissions fees,
6 prepaid charges, or minimum stay fees may not be kept by the facility.
7 If a resident dies or is hospitalized or is transferred to another
8 facility for more appropriate care and does not return to the original
9 facility, the facility shall refund any deposit or charges already paid
10 less the facility's per diem rate for the days the resident actually
11 resided or reserved or retained a bed in the facility notwithstanding
12 any minimum stay policy or discharge notice requirements, except that
13 the facility may retain an additional amount to cover its reasonable,
14 actual expenses incurred as a result of a private-pay resident's move,
15 not to exceed five days' per diem charges, unless the resident has
16 given advance notice in compliance with the admission agreement. All
17 (~~long-term care facilities or nursing~~) facilities covered under this
18 section are required to refund any and all refunds due the resident or
19 his or her representative within thirty days from the resident's date
20 of discharge from the facility. Nothing in this section applies to
21 provisions in contracts negotiated between (~~a nursing facility or~~
22 ~~long-term care~~) the facility and a certified health plan, health or
23 disability insurer, health maintenance organization, managed care
24 organization, or similar entities.

25 (2) Where a (~~long-term care facility or nursing~~) facility
26 requires the execution of an admission contract by or on behalf of an
27 individual seeking admission to the facility, the terms of the contract
28 shall be consistent with the requirements of this section, and the
29 terms of an admission contract by a long-term care facility or an
30 intermediate care facility for the mentally retarded shall be
31 consistent with the requirements of this chapter.

32 **Sec. 9.** RCW 70.129.160 and 1998 c 245 s 113 are each amended to
33 read as follows:

34 The long-term care ombudsman shall monitor implementation of this
35 chapter and determine the degree to which veterans' homes, nursing
36 facilities, adult family homes, (~~and~~) boarding homes, and
37 intermediate care facilities for the mentally retarded ensure that

1 residents are able to exercise their rights. The long-term care
2 ombudsman shall consult with the departments of health and social and
3 health services, long-term care facility organizations, the human
4 rights committee of an intermediate care facility for the mentally
5 retarded, resident groups, and senior and disabled citizen
6 organizations.

7 **Sec. 10.** RCW 70.129.170 and 1994 c 214 s 19 are each amended to
8 read as follows:

9 (1) The legislature intends that (~~long-term care facility~~)
10 residents of facilities or nursing home residents, their family members
11 or guardians, the long-term care ombudsman, protection and advocacy
12 personnel, and the human rights committee identified in RCW
13 70.129.110(~~(4)~~) (5) (e) (~~and~~), (f), and (g), and others who may
14 seek to assist (~~long-term care facility or nursing home~~) residents,
15 use the least formal means available to satisfactorily resolve disputes
16 that may arise regarding the rights conferred by the provisions of
17 chapter 70.129 RCW and RCW 18.20.180, 18.51.009, 72.36.037, and
18 70.128.125. Wherever feasible, direct discussion with facility
19 personnel or administrators should be employed. Failing that, and
20 where feasible, recourse may be sought through state or federal long-
21 term care, intermediate care facility for the mentally retarded, or
22 nursing home licensing or other regulatory authorities. (~~However,~~)

23 (2) The procedures suggested in this section are cumulative and
24 shall not restrict an agency or person from seeking a remedy provided
25 by law or from obtaining additional relief based on the same facts,
26 including any remedy available to an individual at common law.

27 (3) Chapter 214, Laws of 1994 is not intended to, and shall not be
28 construed to, create any right of action on the part of any individual
29 beyond those in existence under any common law or statutory doctrine.

30 (4) Chapter 214, Laws of 1994 is not intended to, and shall not be
31 construed to, operate in derogation of any right of action on the part
32 of any individual in existence on June 9, 1994.

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